

21.03.2023

Court : 37
Item : CD-10 to 13
Matter : FMAT
Status : DISPOSED OF
Bench ID : 266049
Transcriber: NANDY

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division).**

FMAT 102 of 2023

with

CAN 1 of 2023

with

CAN 2 of 2023

&

FMAT 105 of 2023

with

CAN 1 of 2023

&

FMAT 106 of 2023

with

CAN 1 of 2023

&

FMAT 107 of 2023

with

CAN 1 of 2023

STATE BANK OF INDIA

Vs.

HOWRAH CO. LTD. MILLS

Mr. Om Narayan Rai, Advocate

Ms. Soma Chakraborty, Advocate

.....for the Appellant

Mr. Abhrajit Mitra, Senior Advocate

Mr. Dennath Ghosh, Advocate

Mr. Sarosij Dasgupta, Advocate

Mr. S. Dutt Majumdar, Advocate

.....for the Respondent

All the afore-mentioned appeals are filed beyond the statutory period of limitation provided therefor. In all the appeals an individual application being CAN 1 of 2023 under Section 5 of the Limitation Act has been taken out for condonation of delay in filing those appeals.

Though the learned Advocate appearing for the Respondent opposes the applications for condonation of delay but upon hearing the learned Counsel for the appellant and on perusal of the averments made therein,

we are satisfied that the appellant was prevented by sufficient cause in filing the aforesaid appeals in time.

Accordingly, delay in filing the appeals is condoned.

The applications being **CAN 1 of 2023** filed in connection with all the aforesaid appeals are **disposed of**.

The appeals are now registered formally.

By consent of the parties, the appeals are not taken up for hearing.

It appears that the instant appeals are filed assailing an *ex parte ad interim order* of injunction passed by the Court and the extension granted thereafter.

It is contended by the learned Advocate for the appellant that an application for maintainability of the suit has been taken by filing a substitute application in this regard and the same is fixed for hearing day-after-tomorrow. It is further submitted that the opposition to the application for temporary injunction has also been filed but despite the Court is mechanically extending the interim order which delayed the disposal of the injunction application.

The respondent says that because of the preliminary objection having taken by the appellant which the Commercial Court thought it fit to decide the same and a date has been fixed for hearing of the aforesaid application and the delay in disposal of the application for temporary injunction cannot be attributable to the conduct of the respondent.

However, we feel that the application for temporary injunction is otherwise ready and the plea of maintainability of the suit has already been taken which in our opinion, can very well be decided simultaneously with an application for temporary injunction.

Since the affidavit-in-opposition has already been filed, we direct the respondent to file reply thereto by Friday i.e. 24.03.2023. Simultaneously, the affidavit-in-opposition to an application raising the plea of maintainability of the suit shall also be filed within Friday i.e. 24.03.2023.

In the event, the appellant choose to file reply thereto, the same can be filed by next Tuesday i.e. 28.03.2023.

Liberty is granted to the parties to pray for an accommodation before the Commercial Court on the next date so fixed i.e. 23.03.2023.

The Commercial Court shall fix the matter on any suitable date which shall not exceed a week after the expiration of the period for exchange of affidavits. However, endeavour shall be shown to dispose of the application for injunction and the application raising the question of maintainability within two weeks therefrom.

It goes without saying that the Commercial Court shall not grant any adjournment to either of the parties unless necessitated by unforeseen and unavoidable circumstances.

Since we have not gone into the merit of the case, none of the observations made hereinabove shall be construed to have any persuasive impact on the

consideration of the aforesaid applications which shall be decided independently by recording proper reasons in accordance with law.

With these observations, all the aforesaid appeals being **FMAT 102 of 2023, FMAT 105 of 2023, FMAT 106 of 2023** and **FMAT 107 of 2023** are **disposed of**.
No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)